

REMARKS

The present application relates to hybrid maize plant and seed 31R88. Claims 5-8, 12, 20-21, 25, 33 and 41-58 have been canceled. Claims 9-11, 13-19, 22-24, 26-32, and 34-40 were previously canceled in the Preliminary Amendment submitted on July 11, 2003. Claims 1 and 2 have been amended. Claims 59-72 have been added at the request of Supervisory Patent Examiner Amy Nelson and puts the claims in form for allowance as suggested by Supervisory Patent Examiner Amy Nelson on November 7, 2003. No new matter has been added by the present amendment. Applicant respectfully requests consideration of the following remarks.

Detailed Action

A. Status of the Application

Applicant acknowledges the finality of the previous Office Action has been withdrawn pursuant to 37 C.F.R. § 1.114.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 8 and 21 remain rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention, for the reasons of record stated in the Office Action mailed February 11, 2003.

Applicant traverses this rejection. However, although not acceding to the Examiner's rejection, in order to expedite prosecution claims 8 and 21 have now been canceled, alleviating this rejection.

Claim 58 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner states claim 58 is indefinite in its recitation of "no statistically significant variation from 31R88".

Applicant traverses this rejection. However, although not acceding to the Examiner's rejection, in order to expedite prosecution claim 58 has been canceled, thus alleviating this rejection.

In light of the above amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 8, 12, 21, 25 and 43-58 remain rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, as stated on page 3 in the Office Action mailed February 11, 2003.

Applicant respectfully traverses this rejection. However, in an effort to expedite prosecution, Applicant has canceled claims 8, 12, 21, 25 and 43-58, thus alleviating this rejection. Applicant has added new claims 59-72 at the request of Supervisory Patent Examiner Amy Nelson and puts the claims in form for allowance as suggested by Supervisory Patent Examiner Amy Nelson on November 7, 2003. Applicant respectfully submits the claims now come within the purview of the written description requirement and request reconsideration.

Claims 8, 12, 21, 25 and 43-58 remain rejected under 35 U.S.C. § 112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is more nearly connected, to make and/or use the invention, as stated on page 3 in the Office Action mailed February 11, 2003.

Applicant respectfully traverses this rejection. However, in an effort to expedite prosecution, Applicant has canceled claims 8, 12, 21, 25 and 43-58, thus alleviating this rejection. In addition Applicant wishes to reiterate that the actual ATCC deposit of hybrid 31R88 and inbred parents GE528776 and GE492452 has been made as provided in 37 C.F.R. §§ 1.801-1.809. Therefore, Applicant submits at least 2500 seeds of hybrid maize plant 31R88 and the inbred parents GE528776 and GE492452 have been deposited with the ATCC as disclosed in the Preliminary Amendment of July 11, 2003. In view of the previous amendments, the rejection under 35 U.S.C. § 112, first paragraph, should be removed. (MPEP § 2411.02) Such action is respectfully requested.

In light of the above amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of the rejections to claims 8, 12, 21, 25 and 43-58 under 35 U.S.C. § 112, first paragraph.

Summary

Applicant acknowledges that claims 1-7, 20, 33 and 41-42 are allowed.

Applicant further acknowledges that claims 1-10, 12-14, 16-18, 20-23, 25-27 and 29-31 are deemed free of the prior art. The Examiner further states the prior art fails to teach or fairly suggest the particularly claimed maize plants with their unique complement of genotypic and morphological characteristics, or methods of using them. This clearly indicates that hybrid maize plant 31R88 as a whole is considered to be distinguishable from the prior art for the purposes of novelty and non-obviousness. Therefore, Applicant respectfully submits that the deposit of the representative seed of 31R88 and inbred parents GE528776 and GE492452 should satisfy the description requirement. In light of the above, Applicant respectfully submits that the rejections under 35 U.S.C. § 112, first paragraph as improper and requests reconsideration and withdrawal of these rejections.

Applicant further acknowledges that claims 59-72 have been agreed upon as allowable by Supervisory Patent Examiner Amy Nelson as aforementioned, thereby placing these claims in form for allowance. Applicant has canceled all non-allowable claims thereby placing the application in condition for allowance and has complied with all requirements of form set forth in previous office actions.

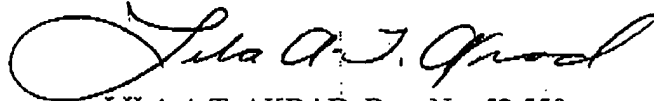
Conclusion

In conclusion, Applicant submits in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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